

Draft Care and Support Bill, July 2012

Briefing 2: Detailed briefing clause by clause

Introduction

This briefing is an in depth analysis of the contents of the [draft Care and Support Bill](#); what it introduces and how it compares to existing legislation. A short briefing looking at key clauses affecting carers is also available (Carers Trust Briefing 1) and further information on what the Bill means for young carers (Carers Trust Briefing 3). Section 1 highlights the parts of the Bill which are most relevant to carers and carer's support services. The remaining sections summarise the Bill in more detail. The briefing includes analysis of what the proposals will mean for carers (see boxed text).

- Section 1: What does the Bill mean for carers
- Section 2: Background and the case for change
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- Section 10: Transitions, young carers and parent carers
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Section 1: What does the Bill mean for carers?

- New duty to provide information and advice relating to care and support (clause 2)
- New duty to promote diversity and quality in provision of services (clause 3)
- New duty to promote cooperation between partners (clause 4-6)
- New duty to provide services that will prevent or delay needs for care and support (clause 7)
- New rights to be consulted on the assessment of the adult needing care (clause 9)
- New single duty for carers assessments based on appearance of need (clause 10)
- Needs assessments should include a whole family assessment (clause 12)
- New eligibility framework and national minimum eligibility threshold (clause 13)
- Charging for carers' services is optional but local authorities can impose charges in meeting carer's needs for support (clause 14)
- New duty to meet carers' needs for support (clause 19)
- Carers should be consulted on care and support plans; carers can prepare plans jointly with local authorities (or other organisations); carers can request a copy of the care and support plan (clause 24)
- New entitlement to a personal budget and new right to request direct payments which can be paid to the carer or the adult needing care (clause 25 and 28)

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Parts of the Bill that need further clarification and amending:

- Young carers and parent carers do not have equal rights to adult carers; they will still have to request an assessment and there is no clear duty to meet their needs
- The legislation aims to ensure better transition for young carers from children's to adults' services but these parts of the Bill are inconsistent with the law for young carers (clause 41)
- There are different definitions of "carers" that need clarification
- It's not clear how a whole family needs assessment relates to the duties to meet needs for care and support
- Definition of "provision of support to the carer" compared with services for the adult needing care
- Whether carers support services should be subject to charging
- Whether the duty to meet carers needs is fair and reasonable including for self-funders
- Whether there should be a duty to provide services to self-funders
- There is no definition of "needs"

Section 2: Background and the case for change

2.1. **Why does the law need changing?**

This legislation will affect everyone – most people will need some care and support at some point in their life and many of those people will need to be cared for by a family member or friend. The existing legal framework for adult social care is incoherent and made up of different pieces of legislation which makes it confusing and complex for people to understand. The current system is not meeting people's needs and this situation is getting worse with a growing and ageing population. The law urgently needs to be consolidated and simplified.

2.2. **Why does the law need changing for carers?**

Existing law for carers is complicated and hard to understand because it is split across three main Acts of Parliament. Law for carers applies to carers of all ages and is separate to legislation that applies to the people they care for.

2.3. Carers are currently treated differently to the people they support; they have to request an assessment and need to be providing a substantial and regular amount of care; local authorities are not obliged to provide support to carers even if they have identified need. As with people with care needs, there is no national eligibility threshold for support for carers and no national eligibility framework to determine levels of need.

Section 3: General duties and a new system

3.1. **Overarching principles**

The Care and Support Bill simplifies, clarifies and improves on the current legislation. It aims to introduce a more person centred care and support system that can meet

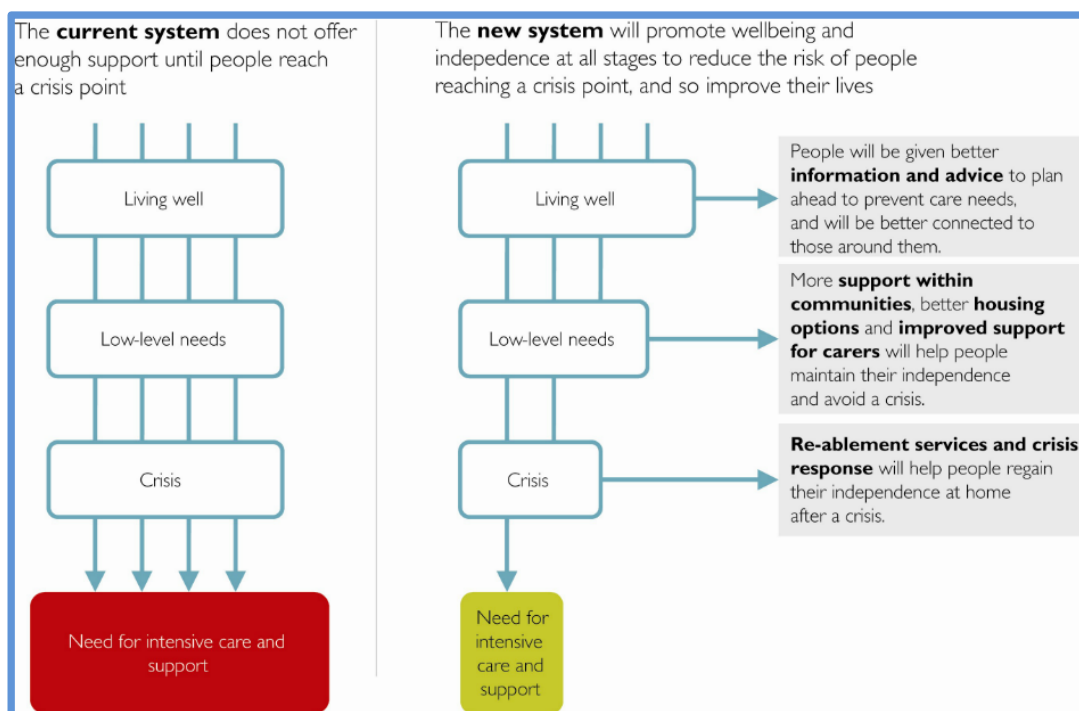
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and respond to the needs of individuals and promote their wellbeing. The new law adopts the majority of proposals outlined in the Law Commission's three-year review of adult social care¹ and it is based on the principles set out in the Government's White Paper *Caring for our future: reforming care and support*.²

- Promote health, wellbeing, independence and rights for long-term quality of life
- Treat people with dignity and respect and protecting them from abuse and neglect
- Achieve personalisation with real choice and control
- Harness skills, resources and networks in every community
- Recognise carers for their vital contribution
- A workforce delivering quality support in partnership with individuals, families and communities

3.2. Broader responsibilities and the wider community

The first section of the draft Bill introduces a number of general duties on local authorities which focus on more universal provision and prevention rather than just individual needs. These clauses outline how local authorities should support the wider community so that people are supported to maintain their own wellbeing and make decisions about their support.



3.3. Clause 1: Duty to promote individual wellbeing

Based on the Law Commission's recommendation for a "single unifying purpose around which adult social care is organised" clause 1 introduces a new statutory

¹ http://www.dh.gov.uk/health/files/2012/07/2900021-Reforming-the-Law-for-Adult-Care_ACCESSIBLE.pdf

² <http://www.dh.gov.uk/health/files/2012/07/White-Paper-Caring-for-our-future-reforming-care-and-support-PDF-1580K.pdf>

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principle to promote individual wellbeing in decisions made with and about individuals. “Wellbeing” relates to: physical and mental and emotional wellbeing; protection from abuse and neglect; control over day-day life (how care is provided); participation in work, education, training and recreation; social and economic wellbeing; domestic, family and personal relationships; the adult’s contribution to society (clause 1(1)(2)).

The wellbeing principle means that when local authorities are making decisions with and about individuals they have to have regard to: the adult’s wishes and feelings; the importance of their participation in decisions and ensuring decisions have regard to the adult’s circumstances and not just “adult’s age or appearance of any condition”. **Importantly for carers, clause 1 (3) (e) specifies that local authorities must consider “achieving a balance between the adult’s wellbeing and that of any friends or relatives who are involved in caring for the adult”.**

3.4. **Clause 2: Duty to provide information and advice**

Local authorities will be required to establish and maintain an information and advice service so that people understand how the system operates in their area and what care and support choices they have and how to access the services available. Services can be provided jointly with other local authorities.

Local organisations that already provide information and advice will be critical for meeting this duty. There is potential for carers’ organisations to play an even greater role, particularly building on existing strengths, e.g. face-face and condition specific advice and support. This type of provision will be important to complement the Government’s commitment to develop online information and resources (see White Paper, page 30-31).

3.5. **Clause 3: Duty to promote diversity and quality in provision of services**

This clause provides for promotion of an efficient care and support market that will ensure people have choice of a range of providers and high quality services to meet care and support needs. The local authority has to ensure that there is sufficient information so that people can make informed decisions about their care; that the market meets current and future demand and continues to develop and improve in a sustainable way.

Carers support services will play an important role in ensuring this duty is upheld, in particular by providing information about the number of carers in an area; the level and nature of demand for services and how local organisations can meet their needs in relation quality and individuals’ outcomes.

3.6. **Clauses 4 - 6: Duty to promote cooperation with partners and integration of care and support with health services**

Clause 4 introduces a new duty for local authorities to cooperate with partners in promoting the wellbeing of adults needing care and support and of carers in meeting their needs. They must cooperate with partners including district councils (if the authority is a county council), each NHS body in their area, local policing body or part of the body in their area; prison authorities and probation and any other person

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specified in regulations. Where it is relevant local authorities must also make arrangements so that there is cooperation between the adult social care officers and housing officers and the Director of Children's Services.

In cooperating with health partners, the local authorities should seek to work with the NHS Commissioning Board where its functions relate to the area, clinical commissioning groups (CCGs) and NHS trusts or foundation trusts.

Clause 5 provides for cooperating in specific cases and makes it clear that local partners (specified above) must comply with a request for cooperation by the local authority unless it is "incompatible with its own duties" or would have an "adverse effect" on its own functions. Reasons for not complying with a request must be provided in writing.

Clause 6 goes on to specify that local authorities must cooperate with health services and health related services (which have an effect on individuals health) in order to integrate provision to promote wellbeing, prevent the need for care and support and improve the quality of care and support for adults and carers.

The duties to cooperate have potential to impact how carers are supported and enable carers' services to work collaboratively with a range of partners to meet carers' needs.

This section does not go as far as the recommendation by the Law Commission that the duty to make arrangements for cooperation also applied to education authorities, NHS public bodies, police and the National Offender Management service. The Government has also decided not to adopt the enhanced duty to cooperate which would apply to relevant organisations when a young person is moving from children's to adult's services.

Although, voluntary and community organisations are not statutory partners, clarification would be helpful on how they are to cooperate when they are providing services on behalf of the local authority and particularly when contracted to deliver a statutory service e.g. carry out a carer's assessment or manage support planning.

3.7. **Clause 7: Duty to prevent people's needs for support**

This is a new duty which will mean local authorities have to provide or arrange for the provision of services, facilities and resources which will contribute towards preventing or delaying needs for care and support or reduce those needs. Importantly local authorities are to identify existing services and "involve or make use of them" for carrying out this duty and identify adults whose needs are not being met. Providing or arranging preventative services can be charged for under this clause (clause 7(4)).

This duty has significant implications for carers support services that provide a range of universal and preventative services, particularly as supporting carers is in itself preventative. This provision potentially provides a key lever for investment and development of carers support services and there is scope for specific reference to carers as part of this provision. It will be important that local organisations can demonstrate preventative interventions and outcomes in relation to reducing or preventing levels of need; numbers of carers and unmet need.

Section 4: Assessment of needs

4.1. **Clause 8: Examples of how to meet needs**

Sets out examples of services that can be provided under the duties to meet needs (clauses 17-19) includes accommodation in a care home or other premises; care and support at home or in the community; counselling, advocacy and other types of social work; goods and facilities; information and advice.

4.2. **Clause 9: Assessment of needs of care and support**

This is a new single right to assessment for disabled people and older people with care and support needs. The duty to carry out a “needs assessment” applies regardless of an adult’s level of need or financial resources. It must take into account outcomes the adult wishes to achieve in their day-day life and how provision of support can help to achieve those outcomes. Adults, any carer and any person whom the adult asks the authority to consult must be consulted as part of the assessment.

4.3. **Clause 10: Assessments of carers need for support**

The Bill introduces a new single duty for local authorities to undertake an assessment based on the appearance of need that they may have or have in the future. This removes requirements for carers to request an assessment or to be providing a substantial amount of care on a regular basis.

It will remain the law that the carer has to be able and continue to be able to provide care and be willing and continue to be willing to provide care. The local authorities will also, as far as feasible have to consult the carer and any person whom the carer asks the authority to consult.

The aim of the assessment is to consider the impact of caring on the carer and to determine whether the carer has support needs and what those may be; it should also consider whether the carer works or is in education or wishes to work or participate in education, training and recreation.

As in existing law a “carer” is defined as an adult providing care or who intends to provide care to an “adult needing care” but not by virtue of a contract or as voluntary work. However, the draft Bill indicates that local authorities will now be able to override the exclusion of carers contracted or working voluntarily if it is “appropriate” to regard them as a carer.

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What is new?

- Carers should be assessed on the appearance of need
- Local authorities have to consult carers and any other person the carer wants to be consulted
- Carers who are contracted or working voluntarily can in some circumstances be regarded as a carer eligible for assessment

The single duty to assess carers on the appearance of need is a welcome step giving carers the same rights as the people they care for. Consultation of carers should ensure they are fully involved in the assessment process and they can involve an advocate if they request the authority to consult them. There needs to be clarification of the definition of a “carer” eligible for assessment in light of the new clause related to exceptions to the definition.

Whilst the new law appears to equalise rights between carers and the people they care for there are two omissions distinguishing carers’ assessments. The duty to assess carers does:

- not appear to apply regardless of the level of their financial resources (as with a “needs assessment” clause 9 (3) (b)) or;
- consider outcomes the carer wishes to achieve in day-day life and how they can be supported to help achieve these outcomes (as with a “needs assessment” clause 9 (4) (a)(b)).

4.4. **Clause 11: Refusal of assessments**

Carers are able to refuse an assessment but if they have refused and then subsequently request one then the local authority must assess the carer. If the carer refuses and the authority believes their circumstances have changed then they can carry out an assessment (under the duty to assess, clause 10). In this circumstance, if a carer is still not happy about having an assessment then they will need to refuse the assessment again.

4.5. **Clause 12: Further provisions for assessments including whole family assessments**

This part of the Bill provides for regulations on carrying out a whole family assessment as part of an assessment of an adult with care needs or as part of a carer’s assessment. The regulations will prescribe that on carrying out the assessment, local authorities must have regard to the needs of the family of the person to whom the assessment relates. This could include anyone in the family, e.g. children, siblings and carers.

Regulations are a form of secondary legislation which are more detailed and give effect to the primary legislation (the Bill or Act). They will require local authorities to take a whole family approach in assessing needs which is welcome. This should have particular implications for young carers, in so far as increasing the likelihood of identifying young carers and reducing inappropriate caring through meeting the needs of the adult or other family members.

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However, implementation will depend on how the regulations are drafted and good practice and this provision could be stronger on the face of the Bill. It is not clear how a whole family needs assessment will relate specifically to the duties to meet needs for care and support and a carer's needs for support (clauses 17-22) or support planning (clauses 23-24) or meeting a young carer's needs for support (including through meeting the needs of the adult with care needs).

A needs assessment can be carried out at the same time as a carers' assessment and either assessment may be carried out by someone other than the local authority or carried out jointly with the local authority. The local authority may provide information about the carer and the adult needing care to the person carrying out the assessment and resources and facilities required to carry out the assessment.

Carers' support services will be able to carry out assessments on behalf of the local authority and it will be necessary to consider the detail on this when the regulations are consulted on, in particular any issues around information sharing and details about an assessment framework (see 2.5).

Section 5: Eligibility

5.1. **Clause 13: Eligibility criteria**

After carrying out a needs assessment or carer's assessment a local authority must decide whether the person has support needs that meet the eligibility criteria and if they do what should be done to meet those needs. For the first time local authorities will have to determine eligible needs of an adult who has care and support needs and carers' needs against an eligibility framework which will be set out in regulations.

The regulations will provide clarity on what constitutes 'eligible' and set a national minimum eligibility threshold which will mean that local authorities will not be able to tighten the threshold below the national minimum. The White Paper indicates that the eligibility threshold will be set at 'substantial'. However, local authorities will be free to set it at a more generous level.

5.2. **Developing an assessment framework** (White Paper, p.32)

The White Paper sets out that to support a new national minimum eligibility threshold the Government will test options for a new assessment framework. This will include looking at the role of assessment in the reformed system and how to streamline the assessment process in relation to other assessments (e.g. benefits) and to make it easier to understand for individuals and their carers who may also want to self-assess.

5.3. **Clause 14: Power to impose charges**

Clause 14 applies to the services for meeting the needs of individuals and carers entitled to support (under the duties to meet needs, clause 17 and clause 19). Local authorities "may" impose charges but they are not under a duty to do so. The power to impose charges will now also apply to "putting in place the arrangements" for meeting needs and not just to services (14(1) (b)). Regulations will

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also include circumstances where services can be provided free of charge, e.g. of a “specified type”; provided “under specified circumstances” to an adult of a “specified description” and for a “specified period only” (14(4)(a-d)).

5.4. **Clause 15: Assessment of financial resources**

If the local authority has decided to charge for a service then they will be required to carry out a financial assessment. This clause aims to simplify rules regarding financial assessments to make it clearer to individuals who need to contribute to the cost of their support. It applies to adults who need care (15(1)) and to carers who need support (15(2)). On the basis of a needs assessment if the local authority is satisfied that there are needs for support, then they must assess the level of the person’s financial resources and the amount they may be able to contribute to the costs of their care.

Regulations will set out provision for carrying out a financial assessment and will make clear when it should be the carer or the person with care needs who is charged and the amount the adult needing care may be able to contribute to the carer’s need for support (15(3)). If the adult’s financial resources exceed the limit (either income, capital or a combination) then the local authority will not pay for care and support. The regulations will describe how to calculate income and capital and how different types of income and capital are to be treated as part of the assessment.

Making the distinction between charging carers and adults with care needs is vital, particularly in relation to issues around charging for replacement care. This provision needs to be consistent with the clauses relating to assessment (clauses 9-10) and duty and power to meet eligible needs (clauses 17-19).

5.5. **Clause 16: Deferred payment agreements**

This is currently adopted in some local authorities and means that they can defer a change in a property if the person enters residential care and the value of their home is taken into account. This will now apply to all local authorities but the local authority will also be able to charge interest in deferred payments, charge for administration costs and charge interest in those costs.

Section 6: Entitlements to support and meeting needs

6.1. **Clause 17 and 18: Duty and power to meet the needs for care and support**

Having carried out an assessment and where necessary a financial assessment there is a duty to meet identified needs if:

- They are ordinarily resident in the area or present with no settled residence
- There is no charge for meeting those needs
- The person does not have financial resources above the financial limit (clause 17(5)) then the local authority will cover the costs of meeting their needs (whether or not a charge applies (under clause 14))
- The person is above the financial limit then they are still eligible for support if they ask the authority to meet their needs (if a charge applies then the person will have to pay for the services (under clause 14))

Local authorities will not have a duty to meet identified needs if the person is above the financial limit and they do not ask the authority to meet their needs. This is different from existing law which provides for a duty to meet needs regardless of financial resources and they can then be charged by the local authority (and costs recovered through the courts if they are not paid) (Carers and Disabled Children Act 2000).

Clause 19: Duty and power to meet a carer's needs for support

Having carried out a carer's assessment, local authorities will be subject to a new duty to meet carer's needs when they meet the eligibility criteria and if they are ordinarily resident or present in the area. The duty can be met through:

Provision of support to the carer:

- If there is no charge for the service
- If the carer's financial resources are at or below the financial limit then the local authority must meet their needs (whether or not a charge applies)
- If the carer is above the financial limit then they are still eligible for support if they ask the authority to meet their needs (if there is a charge then the carer will have to pay for the services)

Provision of support through provision of care and support to the adult needing care:

- If there is no charge and the adult agrees
- If the adult needing care is at or below the financial limit then the local authority must meet the needs in question (carer's) by providing care and support to the adult (whether or not a charge applies and as long as the adult agrees)
- If the adult needing care is above the financial limit then they must ask the authority to meet the needs in question (the carer's) by providing care and support to the adult (if there is a charge then the adult needing care will have to pay for the services)
- Importantly, if it's not feasible to support the carer through providing care for the cared for then the authority has to find some other way to provide support to them (clause 19(8)).

It is important to note that it is optional for local authorities to impose a charge for meeting needs under this duty (clause 14) as with meeting the needs of an adult with eligible needs (clause 17).

In addition, if after a carers' assessment (and where applicable a financial assessment) a carers' needs do not meet the eligibility threshold and the duty to meet their needs does not apply, then the local authority can still meet their needs through the provision of support to the adult needing care as long as the adult agrees (clause 19(6)). Meeting a carers' needs through provision of support to the adult may also include supporting the adult even if the duty to meet their needs (clause 17) does not apply (clause 19(7)).

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The duty does strengthen carers' rights to support but if **carers or the cared for person is over the financial limit then they will have to request that their needs are met by local authorities and if their authority is charging for carers' support services then they will have to pay for their own support.**

It is important to consider whether the current drafting of this clause provides for fair and reasonable access to services for carers who have been found to have eligible needs in the context of local authorities' charging for support. Further clarity is needed about how this duty applies in relation to services specifically for the carer and in relation to services for the adult they care.

- 6.2. **Clauses 20-22: Exceptions to meeting needs and a carer's needs for support**
Clause 20: Local authorities do not have to meet the needs of asylum seekers (who are excluded from benefits under the Asylum Act 1999) and this includes if their needs arise from being destitute. Asylum seekers who are caring for a family member or friend will also be excluded from having their needs met through meeting the needs of adult they care for.

Clause 21 specifies where it is not care and support that may meet needs and where responsibility lies with the NHS and **clause 22** specifies where responsibility lies with housing authority under relevant housing legislation.

Section 7: What happens after assessments

- 7.1. **Clause 23: Steps for the authority to take**

Where a local authority is required to meet needs, they must prepare a "care and support plan" or for a carer a "support plan". The "care and support plan" must specify which needs will be met by direct payment and help the adult decide how to have their needs met. It is not clear if subsections (b) and (c) also apply to carers.

If the local authority is not going to meet needs then they must give the adult a written record of the assessment of carer's assessment; record of a financial assessment and advice and information about how their needs can be prevented or delayed.

- 7.2. **Clause 24: Care and support plan, support plan**

This clause specifies what should be included in a "care and support plan" and "support plan": needs identified by the needs assessment or carer's assessment; extent to which needs meet eligibility criteria; the needs that will be met by the local authority and how; which outcomes are relevant (under section 9 as part of a needs assessment) and whether a carer wishes to work or participate in education, training or recreation; includes the personal budget for the carer.

Carers should be consulted by the local authority preparing a support plan for an adult as well as the person themselves and any other person they request to be consulted. Carers should also be given a copy of the care and support plan if the adult ask the authority to do so (clause 24(8)(b)). In the case of a carer's support plan, similarly the adult needing care should be consulted "as far as feasible".

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In meeting some needs with direct payments plans must state which needs are to be met; how they will be met with direct payments and the amount and frequency of direct payments.

Care and support plans and support plans can be prepared jointly with adults needing care or with carers and agreed jointly (clause 24(6)). Other organisations can also carry out plans. In addition, where an adult has a carer, a care and support plan and a support plan can be combined if the adult and the carer agree (clause 24(11)).

7.3. **Clause 26: Review of care and support plan or of support plan**

Review of plans must have regard to particular outcomes (only to be identified by a needs assessment not a carer's assessment) and carer's employment of education and training needs. Reviews must involve consultation with the carer and adult and if needs have changed the local authority must carry out a further needs assessment of carer's assessment if appropriate.

7.4. **Clauses 31-33: Continuity of care when a person moves**

New portability arrangements set out that if a person moves area it will now be up to the new local authority to continue to meet their needs as in the old areas and transitional arrangements will remain in place until a new assessment is carried out.

This section also outlines that if care arrangements are made by an authority in another area (including residential accommodation) then the authority that made the arrangement remains the responsible authority. Disputes about "ordinary residence" are addressed under clause 33.

Section 8: Personal budgets and direct payments

8.1. **Clause 25: Personal budgets**

For the first time the draft Bill sets out a requirement for personal budgets for adults needing care and carers. Personal budgets are defined as the amount that has been assessed for meeting needs; the amount which the adult must pay towards their care and support and the amount which the local authority must pay towards that cost (based on a financial assessment). A personal budget may also specify other amounts of public money available for a person's care e.g. relating to housing, healthcare or welfare.

8.2. **Clause 28,29,30: Receiving direct payments**

Clause 28 makes it clear that where the local authority is contributing towards the adult's personal budget the adult has a right to request direct payments (paid to them or a nominated adult who can be a family member or carer). Regulations will set out conditions that apply to this request, including on capacity to make a request; agreement by a nominated recipient; local authority discretion on allowing the adult or nominated person to receive direct payments; judging capability to manage direct payments and that direct payments are appropriate.

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Clause 29 clarifies the law in relation to what should happen if the adult is without capacity to request direct payments and a person must be authorised under the Mental Capacity Act 2005 to request direct payments. Conditions will also apply and will be listed in regulations. Regulations will also set out cases or circumstances where local authorities must not make direct payments (**clause 30**).

Section 9: Safeguarding adults at risk of abuse or neglect

9.1. **Clauses 34: Enquiry by a local authority**

The draft Bill introduces a new statutory framework for adult safeguarding bringing the law in line with safeguarding legislation as it applies to children and young people at risk of abuse or neglect. Clause 34 stipulates that where local authorities have “reasonable cause” to suspect that a person has care and support needs and is at risk of abuse and neglect then they must make “whatever enquiries it thinks necessary to enable it to decide whether any action should be taken and if so by whom”.

It is significant that there is no definition of “neglect” included despite a distinction being made. The definition of “abuse” provides a list which focuses on matters related to a person’s finances or property; it is not clear if “abuse” as it applies under subsection 1 should be interpreted exclusively in relation to financial matters or include a broader definition, e.g. physical and or emotional maltreatment. Clarification will also be needed in relation to the functions of Safeguarding Adults Boards). **There is no specific reference to carers who may be in need of protection in relation to adults needing care.** Clear guidance will be necessary for this section: it is not clear what “enquiries” should involve; the process for making enquiries or who else (statutory or voluntary partners who may know or be involved in supporting the person) should be involved.

9.2. **Clause 35: Safeguarding Adults Boards**

All local authorities will now be required to establish a Safeguarding Adults Board (SAB) in their area with the objective to help and protect adult in its area in cases described in clause 34 (see comments above). SABs can be established for combined areas. CCGs will be required to be on SABs and local organisations will be able to be members. SABs will have to prepare a strategic plan and consult its local HealthWatch. Further detail on membership, strategy and annual report is included in Schedule 1).

9.3. **Clause 36: Safeguarding adults reviews**

Reviews must be arranged by the SAB if an adult has been found to be experiencing abuse and neglect or the SAB suspects this to be the case (even if the person is not receiving care in their area); and if an adult dies or there is “reasonable cause” concern about how another individual acted in the adult’s case. Findings of reviews, including identified lessons to be learnt from individuals’ cases and applying lessons to future cases, will be included in the SAB’s annual report. The annual report must be shared with the Chief Executive and leader of the local authority; local policing body; local HealthWatch and the chair of the Health and Wellbeing Board.

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It is not clear how SABs reporting will be shared more widely if at all (guidance will need to specify this level of detail). This may have particular implications for voluntary organisations and carers involved in the care and support of the individual or implicated in a review. Membership of SABs does not appear to include some key partners, most notably probation, prisons and mental health trusts. It does not appear that the duty to cooperate (under clause 4-6) which has been drafted as a general duty around promoting wellbeing will apply in specific circumstances where there is a safeguarding concern.

- 9.4. **Clause 37** specifies that local authorities may no longer remove a person in need of care from home. **Clause 38** places a duty on local authorities to protect the property of individuals when they are being cared for away from home but local authorities can recover reasonable expenses to do this.

Section 10: Transitions, young carers and parent carers

10.1 **Clause 39: Assessment of a child's needs for care and support**

Only refers to assessment of a child's needs for care and support on transition for children to adult care and support. This clause applies to any child including young carers who may have care and support needs. This clause specifies that a young person must continue to receive children's services (under the Children's Act 1989) until such a time as adult services have carried out an assessment and are ready to meet needs. This should prevent young people from losing support at the critical point of transition.

This is a much needed development to ensure continuity of care and support at the critical point of transition. However, it only refers to services under the Children's Act 1989 and it should include any social care support that a child receives under other legislation.

10.2. **Clause 40: Assessment of parent carer's need for support**

Parent carers may request an assessment when they provide or intend to provide care for their child (rather than a duty to assess needs as with an adult carer).

10.3. **Clause 41: Assessment of a young carer's need for support (at transition only)**

Aims to ensure better transition between children's and adult support and will enable young carers to undergo an assessment under adult legislation ahead of their 18th birthday, to determine what needs for support they may have at the age of 18, and support planning for their transition to adulthood.

Young carers approaching 18 may receive an assessment when they or their parent requests one (rather than a duty to assess needs as with an adult carer). A Young Carer eligible for an assessment is a person under 18 years caring for an adult and a child "in need" or part of a family for whom, or for a member of whose family is in receipt of services under section 17 of the Children Act 1989 (clause 41 (3)).

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A young carers assessment must include whether the young carer is able to care and is willing to do so after a young carer becomes 18 (clause 41 (8)) and when the young carer becomes 18 the local authority must decide whether to treat the assessment as an adult's carers assessment (clause 41 (11)). The assessment should include what the care and support needs are and likely to be when the child becomes 18.

Under this clause, the Government have clarified that:

- The assessment under the new adult statute would be in addition to any assessment or services received under children's services
- The right to a carer's assessment under section 1 of the Carers and Disabled Children Act 2000, would continue to apply to young carers aged 16-17
- The draft Bill would replace only the element of this provision which relates to carers over the age of 18. In effect, "carve out" the adult carers' element, since that right to a carer's assessment would be replaced by the provision in clause 10 of the draft Bill

It is inconsistent that there is a duty to assess adult carers when they appear they 'may' have need for support and not for young carer who are still required to request an assessment or their parent has to. This is also true for parent carers effectively giving adult carers stronger rights.

The provisions for young carers will remain the same (as provided for under The Children Act 1989, The Carers (Recognition and Services) Act 1995, Carers & Disabled Children Act 2000 and the Carers (Equal Opportunities) Act 2004). However, whilst the Law Commission recommended that the duties to assess a young carer in the 1995 and 2000 Acts should be retained and amended so that they would only apply to carers aged under 18, it also recommended that the 1995 and 2000 Acts are amended to make them consistent with the threshold for a carer's assessment under the proposed adult social care statute.

The Law Commission recommended that the Government and the Welsh Assembly Government should either consolidate the 1995 and 2000 Acts so that there is a single young carer's statute or repeal this legislation and incorporate the provisions into the Children Act 1989. Similarly, for parent carers the Government and Welsh Assembly should either integrate the duty to provide a parent carers' assessment in with the single young carers' statute, as described or incorporate them into the Children Act 1989.

The draft Social Care Bill makes provision in respect of adults caring for adults and it will repeal the current carer provisions that relate to adults caring for adults. It significantly develops adult carers' rights, their recognition and need for support, but it does not develop the law in the same way for young carers.

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Currently, the draft Bill separates the law for young carers but it is vital that the adult's statute promotes a whole family approach so that in meeting adults' needs adult services identify and properly support young carers without relying on children to provide part of the care package. It will be necessary to look at both the children's statute and proposed adult's framework to ensure that both children's and adult's services are responsible for meeting the needs of young carers.

On transition, older young carers will only be able to request an assessment which accounts for their needs beyond 18 if they are a child "in need" under the Children's Act 1989.

- This would set a higher threshold for support than currently applies for young carers' assessments and for adult carers' assessments;
- It would result in inconsistency between eligibility for assessments for young carers under 18 and young carers on becoming 18 and;
- Exclude young carers caring for parents who may receive services under other legislation e.g. currently the Chronically Sick and Disabled Person's Act

10.4. **Clause 42: Further provisions for assessments under 39 to 41**

Specifies that a needs assessment under section 17 can take place at the same time as a young carers assessment if the child and parents agrees or the local authority believes it is in their best interests (relevant to assessments at transition, clause 39).

10.5. **Clause 43: Continuity of services under section 17 Children's Act 1989**

Appears to omit continuity of services provided to young carers under section 1/2 Carers and Disabled Children's Act 2000.

Potential issues: The omission will be amended so that the same transitional protection applies if the services are provided under the 2000 Act to a young carer reaching the age of 18.

10.6. **Clause 44: Power to meet a young carers' needs for support**

As in the Carers and Disabled Children's Act 2000 and Carers (Equal Opportunities) Act 2004 and the local authority must have regard to any services provided under section 17 Children Act 1989.

Section 11: Other provisions and next steps

11.1. The remaining sections of the Bill include a number of important provisions:

- Updating **powers to recover debts** (clause 45-46)
- **Discharge of hospital patients with care and support needs** (clause 47 and Schedule 2): Aims to rationalise provisions for reducing delayed discharges from hospitals and replaces the Community Care (Delayed Discharges) Act 2003; specifies that the NHS Trust must notify the local authority of care and support needs and should consult the patient and carer. Provisions for assessing carers at the point of discharge have been retained (see Schedule 2).
- **Amendments to the Mental Health Act 1983** to ensure consistency in law between aftercare services and care and support services provided to people

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who have been retained in hospital for a mental disorder (clause 48 and Schedule 3)

- **New powers to delegate some care and support functions to other organisations** for example the assessment process of support planning (clause 51)
- **Repeals and revocations** the three Carers Acts from 1995, 2000 and 2004 are not being repealed (see section 9 for retaining provisions relating to young carers) but the new rights for carers in the draft Bill will replace the rights in these three Acts.

11.2. What's next?

Carers Trust strongly encourages carers and Network Partners to respond to the consultation and to feed into the Carers Trust response. You can do this in the following ways:

- Organise your own consultation event or contribute to a local consultation response with carers and local partners
- Use Carers Trust Consultation Toolkit to help you put together a response – includes more information on the consultation process and top tips
- Respond online by answering the consultation [questions by topic](#) or [comment-by-clause](#);
- Submit your own written response (using the Consultation Toolkit to help you). Email or send your consultation response to the Department for Health:

Email: careandsupportbill@dh.gsi.gov.uk

And copy in Carers Trust esmale@carers.org or;

Write to:

Draft Care and Support Bill Team
Department of Health
6th Floor
Richmond House
79 Whitehall
London
SW1A 2NS

The consultation deadline is 19th October 2012

11.3. For help, information or advice, please contact:

Emma Smale, Senior Policy & Parliamentary Officer, Carers Trust
esmale@carers.org

11.4. Useful Resources

- Carers Trust Consultation Toolkit – top tips on responding to the consultation <http://www.carers.org/>
- Carers Trust draft Care and Support Bill Briefing 1: Short briefing on key clauses affecting carers <http://www.carers.org/>

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- Carers Trust draft Care and Support Bill Briefing 3: What does the Bill mean for young carers? <http://www.carers.org/>
- The draft Care and Support Bill http://www.dh.gov.uk/prod_consum_dh
- Easy Read version of the draft Care and Support Bill <http://www.dh.gov.uk/health/files/2012>
- The Law Commission report http://www.dh.gov.uk/health/files/2012/07/2900021-Reforming-the-Law-for-Adult-Care_ACCESSIBLE.pdf
- Department for Health 8 Factsheets <http://www.dh.gov.uk/health/2012/07/cs-bill-factsheets/>